D. Policies Regarding the Treatment of Customers Who Asked for Adjustments Have Become More Onerous and Difficult

AT&T and Lucent have attempted to minimize the amount of billing adjustments when customers claim but cannot prove that they have been billed erroneously (so-called "unsubstantiated claims"). These situations arise when a customer claims not to lease, or to have returned leased equipment, or to lease different equipment than shown by the billing system. AT&T and Lucent generally have not taken a customer's word and the customer has had to abide by AT&T and Lucent's account records, unless a customer has proof that the telephone was returned.. Thus, customers have paid the price for inaccuracies in AT&T and Lucent's own records. AT&T and Lucent have done nothing to verify the accuracy of their account data. Placing the burden on customers is doubly problematic for telephones returned by mail, since it appears that receipts have not been provided for mailed-in phones.[115] AT&T and Lucent tightened adjustment policies over time.

In 1991, AT&T instituted guidelines aimed at reducing by 20% the amount of adjustments for unsubstantiated claims.[116] Associates were instructed to negotiate as low an adjustment as possible, offering first to remove equipment from the bill as of today's date, then offering to give credit back to the current bill date, then offering to give credit back to the first previous bill date, then, if the customer still wanted further credit, to use good judgment in determining if further credit should be given.[117] In situations when a customer claimed to have returned a telephone but had no receipt, AT&T instructed its associates to not call Phone Centers or service agencies to try to determine whether the set had been returned, and to not suggest that the customer check with the Phone Center or service agency.[118]

In 1995, as part of its response to complaints by consumer groups, AT&T agreed to review its adjustment policy, standardize the implementation, and consider liberalizing the policy. However, rather than seriously considering liberalization, AT&T included in its internal success criteria for the review that "Adjustments are kept at the lowest possible cost."[119] As a result of this review, the adjustment policy was made more stringent rather than liberalized. While an on-line LSC associate previously had authority to make whatever adjustment he/she deemed appropriate, the new policy limited the associate's adjustment authority to no more than the amount of one year's bill. Customers who were unwilling to accept adjustments within that limit were transferred to CSS for possible further negotiations. The result was more centralized, and thus more standardized, procedures for adjustments.[120]

In late 1997, revisions were implemented so that the authorized adjustment period for an on-line associate was decreased from one year to six months.[121]

E. Written Communications to Customers Have Been Misleading.

From the beginning, written communications to customers have been incomplete, misleading, and deceptive, with the intent of discouraging customers from terminating their leases. Instead of informing customers regarding leasing and other options, customer communications have been little more than a sales pitch for leasing. Bill enhancements, "informational" bill inserts, and Lease Service Contracts developed in the mid-1990s purportedly to increase customer awareness focused instead on lease benefits with the goal to "maximize customer retention." The unclear, confusing, and misleading communications have deprived customers of valuable information they need in order to choose between lease and purchase alternatives.

AT&T and Lucent never provided customers with comprehensive information regarding lease terms and conditions. AT&T knew that bill itemization could increase erosion, and did not routinely itemize bills until it was pressured to do so in 1995.[122] Between 1984 and when monthly bill itemization started in the fall of 1995, the only times that AT&T told embedded base customers what telephones they were leasing were in the first AT&T bill, in rate increase notifications, and when customers replaced a telephone or leased additional equipment.[123] Communications have used confusing jargon such as "refurbished" instead of "used," and "repricings" and "rate alignments" instead of "price increases."

The notice that AT&T sent in 1983 to inform customers that their leases were being transferred to AT&T[124] was misleading and deceptive in several respects. First, it informed customers that they had two options: to purchase the phone in place or to continue leasing the phone. The notice did not disclose the third option: the customer could stop leasing and return the telephone. The attached mail-in sheet instructed customers to "exercise your options" by checking either the option to continue leasing or the option to purchase the in-place phone, without listing the third option of terminating the lease and returning the telephone. Second, the notice made it difficult to compare lease and purchase options because it presented the <u>monthly</u> lease rate and the <u>total</u> sale price, making the lease option look relatively less expensive. AT&T did not disclose average repair rates, either. Third, the notice did not inform customers that the sale-in-place option would expire. Fourth, the notice stated that lease rates for the Big Six telephones, except for traditional rotary telephones, "may be increased after January 1, 1985 if the Consumer Price Index (CPI) increases." This statement was unclear and misleading because it did not specify a time limit on the commitment to limit lease rate increases, and could be read to imply both that traditional rotary lease rates would not increase, and that lease rates for other telephones would increase by no more than the CPI. All of these shortcomings withheld information that customers needed in order to make a reasoned decision and unfairly and deceptively encouraged customers to continue leasing.

AT&T sent a brief "Read Me Before You Pay Your Bill" brochure[125] to customers in their first lease bill after AT&T instituted its own billing system in late 1984, explaining that AT&T was now billing directly for leased telephones. At that time, AT&T commenced quarterly billing, with the brochure explaining that "To save you time, postage, and checkwriting costs, we will bill you only 4 times a year," without disclosing that the customer now has to pay three months in advance rather than the previous one month in advance. The brochure also misleadingly promised that "You can call us 24 hours a day with any problem or question you may have." It promised that customers could change the color and style of their phones, without disclosing limitations for hardwired or party-line customers. Both the brochure and AT&T's media advertising regarding direct billing[126] emphasized that, "You don't have to do anything," encouraging customer inertia.

AT&T has stated that it sent a notice "during 1986 that the option (legal right) to purchase in-place leased equipment granted by the FCC for the two year period following deregulation had expired."[127] That notice has not been made available for review.

The lease operations had only oral contracts until at least 1989, when AT&T first provided Lease Service Contracts for new telephones (called Lease Product Expansion (LPE) telephones) and newly refurbished embedded base products.[128] AT&T sent the first Lease Service Contract to pre-1984 customers in the fourth quarter of 1993, with updates in 1995 and annually thereafter.[129] As discussed in Section III.B above, the Lease Service Contracts focus on lease "benefits" and omit or misrepresent several material limitations or costs of leasing. Use of the term "lease service" is ambiguous and confusing since it does not specify that the contract is for the lease of telephones, and some customers confuse the lease with basic local or long distance service. Lease Service Contracts did not specify until 1995 that the contract covers only AT&T lease telephone equipment and does not include charges for local or long distance telephone service.

Lease bills are vague and confusing. Early bills[130] were for "leased equipment" with no mention of "telephone" anywhere on the bill. The term "leased equipment" was vague and confusing. The bill was "enhanced" with bill itemization beginning in late 1995 and phased in through April 1996; however, the word "telephone" still appeared only once on the bill--only on the line itemization. An inadequate six-line terms and conditions summary was added to the bill beginning in April 1996.[131] The bill was modified later to say "We appreciate your lease telephone equipment business" and to state that "This bill does not cover any charges for local or long distance telephone services."[132] Many customers thought the bill was related to basic local service or to long distance service. The bill is in all capital letters, which makes it difficult to read and confusing.

Customers received notices of price increases either as bill messages or as separate stand-alone notices (if needed for quarterly-billed customers to receive at least 30 days' notice).[133] The notices used unclear and confusing language. They listed a type of telephone leased by the customer and gave the new monthly lease rate, without specifying the number of telephones affected. The 1986 bill message used abbreviations (for example, "TRAD ROT DSK MISC") and did not mention the word "telephone." It specified that lease charges would increase and gave the new amount, but did not provide the old price or specify the amount of the increase.[134] The 1988 bill message was similar, but stated only that the lease charges would change, without specifying that the change was an increase.[135] These omissions made it difficult for a customer with more than one leased telephone, or who was billed quarterly, to assess the total impact on the lease bill. Notices of the 1992 repricing improved, with the words spelled out and including the word "telephone," specifying the new rate and the monthly increase for a type of telephone.[136] Customer notices of the 1994 rate increases still did not show the quantity of phones affected, listing only the product family and type, the new lease charge, and the "Monthly Difference," with no indication that the price change was an increase.[137]

From at least 1985, AT&T intentionally did not advertise for sale Big Six or comparable telephone sets to the lease base, because AT&T knew that such marketing would cause erosion among lease customers.[138] Bill inserts purportedly sent to inform customers of purchase alternatives were, instead, for high-end telephone equipment that was not cross-elastic with the leased telephones.[139] This deliberate policy withheld from lease customers valuable price information they needed in order to make informed choices between lease and purchase options.

During 1990, AT&T sent to its leasing customers a booklet entitled "A Mini-Guide to AT&T Lease Services,"[140] supposedly containing information about leasing and "some practical telephone tips." In reality, the booklet advertises the "benefits" of leasing. The supposedly "helpful telephone tips" are really plugs for leasing: the tip on untangling cords ends with a pitch for free new cords for leasers, the tip on trouble-shooting turns into a pitch for free replacements to leasers, and the tip for moving or redecorating is a straightforward pitch for color exchanges and taking the leased phone with you when you move.

In 1995, AT&T refused an FTC request to distribute a consumer advisory prepared by the FTC.[141] In explaining its objections to the FTC advisory, AT&T opposed the advisory's statement that "You may be leasing and not know it. Check your phone bills to be sure," even though AT&T's own studies indicated that a significant number of customers did not know they were leasing. AT&T opposed inclusion of a chart comparing purchase and lease costs for one and five years, which it claimed was misleading on the basis that purchased phones may not last five years, even though AT&T knew that its embedded base phones needed repairs, on average, no more than once every 8 years.[142] AT&T also opposed inclusion of the statement that people may have saved "hundreds or even thousands of dollars over the years," even though internal AT&T documents[143] show that AT&T knew this to be an accurate statement.

Instead of the FTC advisory, AT&T developed and sent its own brochure, "Your Consumer Guide to Leasing or Purchasing Telephone Equipment."[144] Rather than providing a balanced discussion of leasing and purchasing, this brochure is largely a promotion for leasing, as noted by consumer groups reviewing a draft.[145] It acknowledges that "lease charges, over time, will exceed the purchase price for the same phone" but rather than providing a comparison it states that lease rates and purchase prices "are not directly comparable because of the array of services provided with leased products and because some of the leased products are unique." Statements that tend to favor leasing include the following:

- AT&T is responsible for the leased phone.
- "If you're hard on phones (damage them frequently, or have a pet that chews up cords), the AT&T Lease Program's free replacement for any reason may be worthwhile."
- Leasing provides batteries and antennas for cordless phones.
- Leasing has intangible benefits like certainty and assurance.
- You may request automatic debits.
- Nothing has to be done to continue leasing.

Statements regarding purchases in this brochure are generally negative and include the following:

- There are many brands and a wide variety of durability, sound quality, and prices. (This makes purchasing sound confusing.)

- The owner is responsible for repairs.

- Purchase warranties are limited.

- To stop leasing, the customer has to take the phone in or "arrange to return or exchange the phone by mail." (AT&T's lack of disclosure that it would send a free postage-paid mailer will tend to deter customers from stopping the lease.)

- The difficulty, length of time, and cost (citing $22 to $50) for repair of purchased phones.

- The need to modularize to replace or repair hardwired phones, or "if you feel you cannot make the change yourself, you may call the toll-free 800 number and arrange for a service technician to replace the outlets and the telephones" at a "special reduced rate." (AT&T's disclosure of a charge for modularization in this context will tend to deter purchases. At the same time, AT&T does <u>not</u> disclose the existence of premises visit charges in Lease Service Contracts, which focus only on leasing, thus making the leasing program seem more valuable than it is and encouraging leasing.)

With the stated intent to enhance hardwire awareness, AT&T sent a brochure entitled "The Benefits of Modular Telephone Equipment" in 1996.[146] The brochure stresses that there is "no need to do anything" if a customer is happy with the currently leased telephone, thus encouraging inertia. While it would be in a hardwired customer's best interest to go ahead and modularize before a repair problem arises, the brochure does not even mention the need to modularize to have telephones repaired, let alone suggest that customers may wish to go ahead and modularize before repairs are needed. Such proactive modularization would make it easier for a customer to terminate a lease, counter to AT&T's goal of lease retention. The brochure does not disclose that customers can obtain modularization kits elsewhere or have modularization done by someone other than AT&T. Regarding premises visits for modularization, it states that, "(Y)ou'll receive a special reduced rate for the service visit" but does not disclose what the rate would be. A significant portion of the brochure markets the lease program, including the Lease Service Guarantees.

Other occasional bill inserts emphasized specific aspects of the lease program[147] and generally contained incomplete and misleading marketing pitches similar to those described above.

F. Improper Marketing Activities

This section addresses marketing activities when a customer contacts AT&T or Lucent to ask questions and/or terminate the lease. In responding to such inquiries, AT&T and Lucent have misrepresented or omitted important information, have deceived and manipulated customers, and have exploited the characteristics of the embedded lease base to discourage customers from terminating their leases. AT&T and Lucent have had information that the lease base is comprised disproportionately of people who may have difficulty making well-reasoned decisions[148] and who are prone to inertia, and have used this knowledge in crafting their marketing activities.

AT&T has instigated deceptive marketing by distributing misleading information to customer contact personnel and training them to use it in their marketing efforts. As one of many examples, AT&T trained customer contact personnel that the 1990 price increases were needed in order to balance the cost of providing the service and in order for AT&T to continue to offer quality lease service, commit to the leasing business for the long term, and introduce enhancements. AT&T personnel were instructed to explain repricing to customers in this way.[149] As explained in Section III.A, the lease business was already extremely profitable and the price increases were based on an assessment of what the market would bear.

As another example, AT&T distributed to associates an April 3, 1995 list of "Commonly Asked Questions and Answers" that contains "key messages and facts," with instructions to use this information in customer contacts.[150] This document includes the following deceptive and misleading statements:

- It states that AT&T believes customers know they are leasing, without disclosing survey results and frequent customer complaints that indicate that many customers do not know they are leasing.

- It states that the Lease Service Contract advises customers of all of the terms and conditions of the lease and provides specific instructions on how to terminate the lease. As discussed above, the Lease Service Contracts omit important limitations and costs of leasing.

- It implies that lease customers know that they could buy telephones without disrupting their telephone service, without disclosing survey results that some customers do not understand this.

- It implies that AT&T's marketing materials provide information about the pros and cons of leasing a telephone, although the provided information is inadequate and biased, as discussed above.

- It states that, "Many times during the past several years, AT&T lease bills have included advertising inserts promoting the price at which new phones could be purchased," without disclosing that the inserts have been for telephones that are not cross-elastic with leased telephones and, thus, do not provide information regarding the price at which comparable phones could be purchased.

- It states that it is difficult to assess how lease prices have changed since 1984, since there were a variety of prices in effect when the business was transferred to AT&T, and that "Some customers who have been with us since 1984 actually aren't paying much more today than they were then. In general, though, lease prices have increased since 1984." These obfuscating statements do not disclose the fact that AT&T's lease prices for Big Six telephones had more than doubled since 1984, with the rate for traditional rotary telephones almost tripling.

- It justifies the fact that customers have paid "more than three times the fair market cost of the equipment" on the basis that the lease rate "covers the lifetime replacement guarantees" in addition to use of a reliable phone, without disclosing the expected frequency of repair or how many replacement telephones a customer could have purchased for the lease payments that have been made since divestiture.

An updated May 24, 1995 version of those Questions and Answers[151] includes an additional question comparing the profitability of residential telephone leasing and sales. The answer misleadingly provides aggregated data that includes other activities, e.g., rental of computers, network systems, and business telephone equipment, even though AT&T had profitability data for residential leasing that showed much higher profit levels. A virtually identical version of the Questions and Answers was still being used in 1997.[152]

Associates have been encouraged to represent that "I believe, as my other customers do, that leasing is a good value for the money,"[153] even though AT&T knew that almost no associates lease and that most customers lease due to inertia or other reasons unrelated to the value of the lease.

AT&T has been aware of other deceptive marketing practices undertaken by associates. By documenting such practices as "effective lease saving techniques," AT&T appeared to condone deceptive marketing practices such as an associate representing to the customer that the telephones are new, characterizing leases as insurance, and stating falsely that the associate leases a telephone.[154]

Lucent has suggested that associates market leases by likening them to extended warranties or insurance,[155] even though neither characterization is accurate.

Continued use of the AT&T name after the leasing business was transferred to Lucent and subsequent entities[156] deceives customers, since AT&T is no longer providing the leases. The one-time bill inserts regarding transfer of the business did not cure this deception.

AT&T and Lucent's "save" techniques, used when a customer wants to terminate a lease, take advantage of characteristics of the lease base. As early as 1989, AT&T suggested that associates probe for factors such as whether a customer was elderly or had a hardwired telephone and to tailor their "save" attempts accordingly.[157] Such efforts became more formalized and refined through later efforts,[158] with customized save attempts based on market or attrition segmentation and the reason a customer gave for wanting to discontinue leasing. Many of the save tactics were designed to exploit customer inertia. A central goal of the save process is to convince the customer to keep leasing, even if for only a short period and at discounted rates. At a minimum, a "successful" save will continue a highly profitable revenue stream for a period of time, broken only if the customer overcomes inertia, goes through the decision-making process again, and succeeds in terminating the lease.

One source of erosion specifically recognized by AT&T occurs when adult children of elderly lease customers get involved. In such situations, the inertia that may have kept that account active is threatened. Children of lease customers may call to cancel a lease if they just recently were made aware of the bill or if this is the first chance they have had to call about it. The child believes that leasing is not worthwhile and is calling to help out the parent. There may be a small window of time when the child is involved, particularly if the child lives far away. The Lease Awareness Training Manual explicitly defined procedures for this group of callers.[159] AT&T has designed save strategies in these unique conditions that attempt to divert termination and get the account back into an inertial state. A 1993 promotion targeted to the group whose "Parents are currently leasing from AT&T"[160] offered either 3 free months of service after each 9 months of service at regular rates, or a choice of either a dictionary or an atlas plus 3 free months of service. By accepting the free service, an adult child may rationalize keeping the lease with the intent of calling to cancel later. This promotion delays the cancellation of the lease and opens up the possibility that, once the promotional period has passed, the child may fail to call again to cancel the lease, therefore allowing the account to slip back into an inertial state until the next time the child has the chance to deal with the bill.[161]

The No-Risk Lease Plan (NRLP) save promotion was targeted at the inertial groups. If other save attempts had failed, an associate offered the NRLP.[162] While there were different versions of the NRLP, the main provision was that the customer would continue leasing at full price and could later use those lease payments as credit (up to 6 months of payments or 75% of the Purchase Option Charge (POC)) toward the purchase of a phone (either the leased phone or a refurbished phone from inventory). The plan was earmarked for groups that exhibited inertia characteristics, i.e., not the "Gotta Haves" or the "Full Program" segments.[163] This program was designed to get customers to keep leasing,[164] which provided an opportunity for the account to slip back into inertia. For customers to make a purchase using NRLP credits, they had to call AT&T again to initiate the purchase.[165] If customers let more than 6 months pass, the "rent-to-own" credit stopped accumulating. If they waited too long, the credit was revoked and customers were in the same inertial state as before.

As another example of save tactics aimed to take advantage of customer inertia, customers who had just initiated a lease with a three-month minimum bill requirement and wanted to terminate were encouraged to wait until the end of the three-month period,[166] which would require them to overcome inertia and take action a second time in order to terminate.

G. AT&T and Lucent have Known that Defending the Lease Program is Problematic

AT&T and Lucent have known that defending the lease program is problematic. AT&T recognized its credibility problems when the FTC was examining the program.[167] AT&T also knew that customer service personnel are troubled by the lease program, that the associates have recommended against rate increases, that they ask for lease enhancements to ease the burden on the most vulnerable customers, and that almost no associates themselves participate in the lease program.[168]

To counter the lack of support by associates, AT&T and Lucent have attempted to "change employee perception,"[169] with the intent of increasing employees' motivation and support for the lease program.[170] AT&T and Lucent have provided associates with misleading or incomplete information, both to "educate" them and so that they will pass the deceptive information along to customers, as discussed in Section III.F.

As one example of misleading information, AT&T told customer contact employees in late 1989 that the 1990 price increases were needed to offset fixed costs in light of declining sets in service, even though in reality profits were already excessive and increased following the increases. AT&T also told employees that the low level of customer reaction to prior price increases was because customers were willing to pay more when they understood what they were paying for, without revealing other reasons such as customer confusion, lack of knowledge, and inertia.[171]

As another example of misleading statements, AT&T told Customer Services personnel in preparation for the 1994 price increases that, "For owners, aligning the lease rates of the selected products establishes a better relationship between our costs and the prices we charge. For our customers, it affords us the opportunity to continue to provide quality lease service to meet their needs," and, "In order to continue to provide the same level of service to our lease customers that we have in the past, it is necessary to align the lease rates of selected products."[172]

As another example, lease awareness training for associates has been undertaken to "educate" them and to provide "key messages and facts" that they are then instructed to use in responding to customers' questions.[173] Misleading information provided in the training module includes the following:

- It explains "why customers lease," listing several lease benefits but omitting the most common reason—inertia.
- It explains that "AT&T regularly includes literature in its bills fully explaining AT&T's lease services." As discussed above, AT&T's literature omits important limitations and costs of leasing.
- The "Questions and Answers" portion of the module contains additional misleading information, as described in Section III.F above.

AT&T made a show of responding to consumer group complaints and the FTC's concerns in the mid-1990s. However, most of its responsive actions were superficial and self-serving, as discussed above. It did not adopt substantive changes that would have responded to criticisms and suggestions made by the consumer groups, its own customer-contact personnel, and its Consumer Advisory Panel, including the following recommendations:

- Allow consumers who are still leasing pre-divestiture telephones to keep them free of charge, and allow customers who have upgraded telephones since 1984 to purchase them.[174]

- Delete premises visit charges, particularly for hardwired, party-line and special problem customers.[175]

- Provide special discounts and services for the elderly (senior citizen discounts, free emergency premises visits, a cap on price increases, free special equipment such as TTYs and volume control handsets).[176]

- Remove the bias toward leasing and provide clearer cost information in the "Your Guide to Leasing or Purchasing Telephone Equipment" brochure.[177]

- Delete the word "service" in the contract document, which confuses customers who might think that the lease bill is their bill for AT&T long distance service.[178]

- Increase typeface that is "too small" and may be hard for some people to read.[179]

- Train customer service representatives not to give customers a hard sell about leasing but to help them understand the options available to them.[180]

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[1] Unless specified otherwise, the term "Lucent" is used herein to refer collectively to the corporate entities operating the consumer lease business commencing with its transfer to Lucent Technologies Inc. in 1996. As explained in Ex. 232, on October 1, 1997, Philips Consumer Communications L.P., a joint venture of Lucent Technologies Inc. and Royal Philips Electronics, assumed responsibility for the consumer leasing business. On December 31, 1998, a reconstituted partnership known as Lucent Technologies Consumer Products L.P. (LTCP) assumed responsibility. Effective January 21, 2000, the assets were assigned to North Street Consumer Phone Services LLC. Under a Servicing Agreement with North Street, LTCP continues to be responsible for the operation of the consumer lease business.

[2] Peter Temin and Louis Galambos, The Fall of the Bell System, Cambridge University Press, New York, NY, 1987, pp. 354-355.

[3] G. D. Morlan, Deregulating Embedded Customer Premises Equipment, February 23, 1984 draft, p. 8.

[4] An AT&T presentation, Consumer Lease Services Highlights of Hamilton Consultants Customer Retention Marketing Study, June 14, 1994, DCRC00107509 et seq., describes a comparison of AT&T's Consumer Lease Services to other businesses. As described below, Hamilton Consultants found that Consumer Lease Services' monthly rental rate as a percent of actual retail purchase price was several times higher than that of almost all other businesses and that the telephone lease business recovers the retail value of its product several times faster than

almost all other programs examined. The only business identified with comparably high monthly rates was Rent-A-Center, which rents furniture, appliances, electronics, and computers on a rent-to-own basis.

Business	Monthly Rent as % of Purchase Price	% of Retail Purchase Price Paid After 12 Months
Lease of Ford vehicle	2%	30%
BMG Music		30%
Lease of office equipment	4%	40%
Ziff-Davis		50%
Columbia House		75%
Cellular service		80%
Trimline lease	20%	238%
Rent-A-Center	21%	255%

An independent check performed in October and November 2001 during the preparation of this opinion found the following relationships between rental and purchase prices:

	Monthly Rent as % of Purchase Price	% of Retail Purchase Price Paid After 12 Months
Musical instruments (monthly rental)	2%	24%
Lease of Ford vehicle (36 months)	2%	24%
Auto rental (weekly rental)	5%	56%
Rent-A-Center TV (weekly rent-to-own after 48 weeks)	20%	235%
Rent-A-Center DVD (weekly rent-to-own after 48 weeks)	26%	313%
Trimline lease	43%	516%
Home Depot tools (daily rentals)	242-452%	
Blockbuster videos (2-day rentals)	280%	

[5] The Federal Trade Commission recently conducted a nationwide survey of rent-to-own customers. It found that 70% of rent-to-own merchandise was purchased by the customer, with 47% of the purchases being made in less than a year. Almost all (90%) of the merchandise kept six months or more was purchased. Merchandise returned to the rent-to-own store was rented for an average of 5 months before being returned, with 81% being returned within 6 months or less. The most common items rented were televisions, sofas, washers, VCRs, and stereos. (Survey of Rent-to-Own Customers, FTC Bureau of Economics Staff Report, James M. Lacko, Signe-Mary McKernan, and Manoj Hastak, 2001, http://www.ftc.gov/reports/rentoown/rtossummary.html).

[6] Ex. 449, Recurring Revenue Marketing Information Platform, January 1, 1990, indicates that the average location life of newly leased telephones ranged between 4.0 and 20.3 months, including new leasers as well as embedded base customers who leased additional telephones (DCRC00026604).

[7] Lucent reported in 1999 that only 11% of then-active consumer lease accounts were created after January 1, 1984 (Ex. 241). Further, some of those may be pre-1984 customers whose accounts had been reclassified as new for various reasons. Ex. 360, AT&T Inward/Outward/UTEC Study, December 1986, described that a significant number of accounts had been classified as new accounts because of billing personnel who appeared to be opening new accounts when handling a phone exchange, movers who returned leased phones at their old address and began leasing anew at their current address, and accounts that had been closed out because of nonpayment and reinstated as new accounts upon payment (DCR_00065696).

[8] Ex. 325, a Market Segmentation Plan distributed by Randy Malone on June 3, 1996 (also Ex. 370), states that, "Due to strategic and financial directions CLS [Consumer Lease Services] no longer pursues growth opportunities. CLS only invests in retention activities" (DCR_01112579).

Shelly Cattan stated that the 1996 brand license forbade Lucent from getting new customers, although the brand license renegotiated in 1999 does allow new customer acquisition (March 14, 2001 deposition of Shelly Cattan at 31).

Ex. 241 provided the number of pre-1984 and new leasers whose accounts were still active in 1999 and indicates the decline in new leases, as follows:

Establishment Date	Accounts	
01/01/84	2640262	89.00%
01/02/84 - 12/31/90	210320	7.09%
01/01/91 - 12/31/93	70425	2.37%
01/01/94 - 12/31/94	9821	0.33%
01/01/95 - 12/31/95	11134	0.38%
01/01/96 - 12/31/96	6106	0.21%
01/01/97 - 12/31/97	6373	0.21%
01/01/98 - 12/31/98	8579	0.29%
01/01/99 - 12/31/99	3654	0.12%

[9] Ex. 442, 1991 Consumer Satisfaction Survey Recurring Revenue Results, March 2, 1992, reported median ages of 44.2 for LPE leasers and 53.5 for embedded base leasers (DCR_00103306, DCR_00103307, and DCR_00103341).

Ex. 453, AT&T Consumer Residential Lease Customer Segmentation Demographics, Behaviors and Perceptions-Source: 1994 Lease Customer Survey reported average ages of 39 for new leasers, 52 for existing-active leasers, and 57 for existing-continuing leasers (DCR_01140528).

[10] As examples, Ex. 443, Lease Repricing Program--Embedded Base Repricing Study noted that the 1986 rate increases resulted in increased profitability. An AT&T document discussing the 1992 rate increases states, "while we will lose some customers due to repricing those remaining will be enough to make 1992 repricing profitable" (Ex. 142 at 1). Ex. 283 forecasted that revenues would increase between $97.2M and $155M over five years following the 1992 rate increases. A Lease Business Review, October 30, 1996, reported that each of the 1988, 1990, 1992, and 1994 "repricings" increased revenues (DCRC00673259).

[11] Ex. 256, a business plan presentation in 1994 or 1995, indicated that for the "Basic Telephones, Pre-Divestiture Customer" business, the Gross Margin % was 90-95% and the Return on Sales was 60-65% and that for the "Enhanced Telephones, Post-Divestiture Customers" business the Gross Margin % was 50-60% and the Return on Sales was 23-30% (DCRC00441294). The Gross Margin is revenue less the cost associated with the production of the product or service (The AT&T Consumer Products Story, February 1991, DCR_00107643). The Gross Margin % is calculated as (total revenue - total cost) divided by total revenue. The Return on Sales is calculated as operating income (total revenue - total cost - total expense) divided by total revenue. Total or operating expenses are the overall expenses required to run the business, such as the expenses associated with sales, marketing, administration, etc., and are not product- or service-specific (The AT&T Consumer Products Story, February 1991, DCR_00107644).

Ex. 111, Lucent Technologies Consumer Products L.P. Lease Financial Results indicates historical financial data for 1984 through 1998, adjusted for historical comparison purposes to reflect changes in accounting methodologies. Return on Sales increased steadily from 22.8% in 1984 to 70.44% in 1998, and Gross Margin % increased steadily from 75.65% in 1984 to 90.74% in 1998.

A later Lucent document reported the 1999 Gross Margin % to be 94.4% and the 1999 Return on Sales to be 71.0% (LTCP Lease Business 1999 Financial Results, DCRC02752622 and DCRC02752623).

[12] Ex. 154, 1994 CP Break-even Analyses, DCR_00720850.

Ex. 107 reported direct monthly recurring expenses for Big Ten leases in 1986 ranging from $0.32 for traditional rotary desk telephones to $0.83 for trimline touchtone wall telephones (DCR_00471741 through DCR_00471753).

[13] AT&T reported in August 1988 that, "AT&T is the exclusive supplier of leased traditional, princess and trimline style telephones in the Bell Operating Company (BOC) territories. Some competition does exist within Independent Company (ICO) territory, e.g., GTE, SNET, United, and Rochester Telephone Company." (New Recurring Revenue Growth, Lease Product Expansion Program Sales Plan, August 1988, DCR_00307172).

Randy Malone acknowledged that there were no lease competitors (April 17, 2001 deposition at 138), while stating his view that anyone who sold a telephone was a competitor.

[14] Consumer Lease Services Fall Business Plan, September 1, 1993, DCRC00101984.

[15] Ex. 174, Second Supplemental Answer to First Set of Interrogatories, answer 16, indicates the following numbers of leased sets in service, as of January 1 of each year:

1984	82,598,164
1986	46,171,690
1993	11,951,360
2000	3,061,808 (as of 9/30/00)

[16] A January 1985 study found that leasers were older, lower income, less educated, and more likely to be female and have smaller households than consumers who owned all of their telephones (Ex. 438, AT&T Consumer Products Division Resolicitation Research, January 1985, DCR_00048576 and DCR_00048608).

A July 1986 Customer Satisfaction Tracking Study found that leasers were older and more were low income than consumers as a whole (Ex. 269, 1986 Lease SBU Market Research Program Research Program Summary of Results, citing July 1986 Customer Satisfaction Tracking study, DCR_00005953).

A 1986 study indicated that continuing leasers were more likely to be less affluent, older, less educated, single-person households, and/or impaired than are people who own all of their phones (Ex. 359, Presentation of CFA/AARP/AT&T Joint Telecommunications Project Emphasis on Equipment Issues, December 4, 1986).

A 1994 study showed that continuing leasers tend to be retired, white, single women, old, homeowners who have not moved recently (Consumer Lease Services Highlights of Hamilton Consultants Customer Retention Marketing Study, June 14, 1994, DCRC00107509 et seq.).

Of the pre-1984 leasers surveyed during an October 1995 Lease Awareness Survey, 26.4% were 75 or older and 25.5% were between 65 and 74 (Ex. 10 at 5).

[17] Allan R. Ginsberg stated during his May 4, 2001 deposition that beginning about 1982 he had identified as part of his forecast over the five-year period and beyond that there probably was going to be a body of people who would be laggers in terms of making decisions and would not change from leasing except over a long period of time. He stated that he had reflected this belief in his forecasts and had discussed this with his supervisors, including Gerard Nelson. (Deposition at 105-110, 114.)

[18] Unless specified otherwise, the term "inertia" is used herein to include attributes such as habit, apathy, or laziness that may contribute to a customer continuing to lease. Ex. 268, A Qualitative Investigation of the Guaranteed Savings Contract Plan described focus group interviews conducted in August 1985, reporting that, "When asked to say why they chose to lease their phones, most respondents gave reasons relating to laziness. Their leased phones were already installed, they did not want to replace wall units and face redecorating, they had never gotten around to buying a phone, and it was generally easier not to change." (DCR_00065044.)

Ex. 360, AT&T Inward/Outward/UTEC Study, December 1986, found that, "As suspected, inertia is the reason cited most frequently [by pre-1984 leasers] for remaining in the lease base."

Ex. 269, 1986 Lease SBU Market Research Program Summary of Results, January 1987 states that "there still appears to be a large portion of lease customers who are leasing only because of inertia and would actually prefer to purchase their phones" (DCR_00005936). It reported results of two studies that evaluated why people lease (DCR_00005954):

	CFA/AARP/AT&T Study	Yankee Group Study
Reason for Leasing:		
Lease Service Reasons	32.3%	40%
Inertia	67.8%	60%

Shelly Cattan stated that Ex. 240, a June 1993 Eric Marder Associates, Inc. (EMA) STEP tracking study, indicated inertia as a reason for leasing (March 14, 2001 deposition at 72-74, citing Ex. 240, DCR 00124233).

Ex. 285 cited a 1994 Lease Customer Study result that 37% of Continuing Customers indicated that they lease because of habit.

Ex. 255, the Lease Operations Fall Business Plan, September 25, 1995, indicated that 60% of leasers were pre-1984 customers who had only the same or a direct replacement product; their main reason for leasing was habit (source: 1995 Lease Customer Study). Thirty percent were pre-1984 customers who have added or changed equipment since January 1, 1984; their main reasons for leasing were habit and service benefits.

The October 1995 Lease Awareness Survey indicated that 48.1% of the 75% of pre-1984 customers who knew they lease continued to lease because they had not given it much thought, an additional 4.7% said they lease because they have no choice, and 3.9% did not know why they lease. Of the 42.7% who preferred to lease (of the 75% who knew they lease), 13% said they preferred to lease because of habit. (Ex. 10 at 2-3.) This survey indicated that

52.8% of the pre-1984 leasers (apparently the 75% who knew they lease) had never replaced a leased telephone (Ex. 10 at 5).

[19] Ex. 269, 1986 Lease SBU Market Research Program Summary of Results, January 1987 reported results of a CFA/ARRP/AT&T study that compared why people lease based on age and income (DCR_00005954):

	CFA/AARP/AT&T Study	
	Total	Older
Reason for Leasing:		
Lease Service Reasons	32.3%	23.2%
Inertia	67.8%	76.8%

[20] A document describing the 1992 repricing predicted that, "The customers we lose [as a result of the planned repricing] are primarily the youth. Per the research performed, there is a 40% decline in lease preference among leasers who are less than 34 and an 18% decline among leasers who are over 55." (Ex. 142 at 1.)

[21] DCR_00286356.

[22] Ex. 299 contains the results of an exploration by Eric Marder Associates, Inc. (EMA) of the relationship among leasers' income level, age, and hardwire status. Of the accounts that EMA had tracked since September 1986, the following percentages were still leasing in July 1990 (DCR_00124214 through DCR_00124217):

All Modular, under 55	41.7%
Some Hardwired, under 55	48.5%
All Hardwired, under 55	52.7%
All Modular, 55 and older	54.5%
Some Hardwired, 55 and older	55.7%
All Hardwired, 55 and older	68.8%

[23] Ex. 299, DCR_00124213.

[24] For example, DCR_01515357 compares AT&T residential lease customer demographics and U.S. population demographics, from the 1994 Lease Customer Survey and 1990 U.S. Census.

[25] Ex. 268, A Qualitative Investigation of the Guaranteed Savings Contract Plan, reported on focus group interviews in August 1985, which found that "many telephone users are still confused about the relationship between AT&T and the phone system overall. Responsibilities for local service, long distance service, owned and leased phones have not been sorted out by many consumers..." (DCR_00065036).

Ex. 436, Lease Base Retention and Growth Concepts, August 1986, reported as a result of focus groups that there was "confusion about which 'telephone company' offers what or is responsible for what, and even confusion about who the 'telephone company' is" (DCR_00048890).

[26] Ex. 240, Qualitative Research Study Customer Satisfaction Measurement for Lease 800 Number Customer Service, June 1993, at 5.

An October 1995 Lease Awareness Survey found that 25% of customers with at least one product with an establishment date of 1/1/84 (including possibly a same model replacement) claimed not to lease, with those claiming not to lease reporting that they either did not know they receive a separate bill, did not know what the bill is for, or thought the bill is for long distance service. Of the 75% who knew they leased, only 58.5% knew that their bill had nothing to do with long distance service. (Ex. 10 (also Ex. 273) at 1, 4.)

Subsequent survey data for continuing customers—who have not had an activity within the last three months—indicated that the following percentages of continuing customers claimed they were leasing (Cattan March 15, 2001 deposition at 172-176 and Ex. 295):

	Traditional Telephones	Trimline Telephones
Dec. 95	79.3%	82.4%
3Q96	84.3%	87.6%

Through discovery, AT&T provided numerous consumer complaints that support the survey findings that many customers do not know that they are leasing their telephones.

[27] '88 Repricing STEP Study Summary of Findings (part of Ex. 443), indicated that only 64% of respondents realized they were leasing from AT&T, 20% of respondents believed they were leasing from Bell, and the remaining 16% did not reliably report from whom they lease. DCR_00053339.

[28] Ex. 10, the October 1995 Lease Awareness Survey Results, at 3 indicated that 25% of the leasers with at least one pre-1984 product who knew they were leasing did not know that their leased phones could be replaced by a purchased one.

[29] A June 1993 study indicated that many leasers "lack any clear sense of exactly what leasing entails," with many thinking that line service and equipment usage are part of the same service. Some thought they could discard the phone when terminating service (Ex. 240 at 4). A 1994 Lease Customer Study found similarly that awareness of lease benefits was relatively low (Ex. 259, also Ex. 274).

Studies indicated that many customers thought the lease provided benefits that it did not and that many customers were not aware of advance payment and minimum bill requirements. Ex. 448, the 1990 Lease Strategy SUMM Study Results, February 1991, reported that 72% of embedded base leasers thought their sets were new (DCR_00645412) and that their lease perception declined by 8.9% upon learning that they are refurbished (DCR_00645602). Two-thirds of embedded base leasers thought that when a lease set is returned for repair it is replaced with a new telephone (DCR_00645437). Additionally, 56% of embedded base leasers thought that premises visits were free (DCR_00645433) and 67% of embedded base leasers thought that they would receive a new phone if they returned a broken phone. Only one-third of embedded base leasers were aware of the advance payment and minimum bill requirements (DCR_00645400 and DCR_00645401); their lease preference declined by 14.7% upon being informed of these requirements (DCR_00645385). In 1992, another AT&T study indicated that 72% of embedded base leasers thought their set was new; that 56% of embedded base leasers thought premises visits were free, and that 67% of leasers thought that their defective sets are replaced with new not refurbished sets (Ex. 359, DCR_00008384). The 1994 Lease Customer Study indicated that about one-third of leasers thought that premises visits were free (Ex. 11 at 3).

[30] Ex. 438, AT&T Consumer Products Division Resolicitation Research, January 1985, reported on a study in which 66% of respondents indicated that AT&T made the "best" telephones, and 73% ranked AT&T in the top three manufacturers (21% did not rank manufacturers) (DCR_00048591).

Ex. 448, 1990 Lease Strategy SUMM Study Results, February 1991, found that embedded base leasers consider AT&T telephones to be substantially more durable than competitive models (DCR_00645492).

AT&T reported that an April 1992 Market Perception (Advertising Tracking) Study found that AT&T remained the market leader in terms of brand awareness, brand preference, and image (product quality, technological advancement, value for money and performance) (May 22, 1992 memo from R. L. Everhart to Lori Selin).

[31] See, for example, Traditional 100 Telephone Equipment (Lease) Focus Group, Group I videotape, November 18, 1998, DCRC02974749.

[32] AT&T characterized that the "Basic Inertia" and "Upscale Inertia" segments "fell into leasing" (DCRC02765302, DCRC02765304).

[33] Ex. 268, A Qualitative Investigation of the Guaranteed Savings Contract Plan, describes focus group interviews conducted in August 1985, which found that most of the interviewees were unaware of their lease rates, and that some considered their telephone lease bill to be a minor segment of their monthly bill-paying (DCR_00065037).

[34] An October 1995 Lease Awareness Survey of pre-1984 leasers indicated that the telephones of 24.0% of the known leasers were all permanently wired, that 6.8% had some telephones that were hardwired and some that could be unplugged, and that 9.5% did not know. When asked why they lease, 16.9% of the pre-1984 leasers indicated one reason to be that they would have difficulty disconnecting the telephone (Ex. 10 at 3,5). In 1992, an AT&T study indicated that 30% of traditional rotary sets were still hardwired (Ex. 142 at 2).

[35] Consumer Lease Services 1994-96 Business Plan described that AT&T's approach prior to 1990 had been to "don't mess with the money tree," with a business objective of delivering the maximum Measured Operating Income (MOI) while managing revenue erosion, which was undertaken through price increases, low-key mass marketing, limited product introductions, and limited operations investment (DCR00011107). Measured Operating Income (MOI) is total revenue less costs and expenses, before interest and income taxes, with costs referring to cost associated with the production of the products or services, and expenses referring to overall operating expenses required to run the business such as expenses associated with sales, marketing, administration, etc . (The AT&T Consumer Products Story, February 1991, DCR_00107643, 00107644, and 00107647).

In a document attached to a June 13, 1996 memorandum from Donna Lazartic to Stephen DeLura et al., AT&T described that key strategies for the 1995-1999 planning period were to "harvest" the lease business "indefinitely to maximize MOI," while maintaining lease service levels to retain customers, managing external legal and PR threats, and managing costs and expenses in-line with revenue erosion (DCRC01181182).

[36] Allan R. Ginsberg stated during his May 4, 2001 deposition that the official forecast during the transition to a market that included sales was that the leasing business would decline (Ginsberg deposition at 108).

The AT&T Consumer Products Story, February 1991, described that AT&T's initial evaluation of the 1984 market indicated that the new telephone procurement options created by divestiture were resulting in a sharp decline in consumer demand for rental products, that consumers were confused by their new options, and that, in the long term, there would remain a significant, but much smaller, consumer demand for rental (DCR_00107627).

AT&T explained to its customer contact personnel in training regarding the planned 1990 rate increases that, "we have taken a lease business that most people thought would rapidly decline and turned it into a successful business. We have: managed lease erosion, increased our revenues." (DCR_00611687.)

[37] For example, in predicting the possible effects of the planned 1990 rate increases, AT&T characterized a "worst case" scenario, in which customers were aware of past rate increases and the current Sale In Place prices. Upon testing, AT&T found that the "worst case" scenario had a "substantial negative impact on lease preference." (Ex. 444, 1990 Lease Repricing--Main Study, June 1989, at 5.) As another example, AT&T noted in 1995 that, "when a customer switches long distance carriers and still receives an AT&T bill, ... their lease awareness is heightened causing them to stop leasing as well" (Ex. 259 (also Ex. 274), Lease Operations Project Overview, July 11, 1995, DCRC00443846).

[38] Lease Encyclopedia, August 1995 Update, at DCRC02596343.

[39] AT&T acknowledged that lease rates were high compared to purchase prices. In 1991, AT&T described that, "we looked at the frequency of repair/replacement transactions and found that the overall average is 1 repair/replacement transaction per 8 years. Based on the current rate for a traditional rotary product the average customer pays $427 for lease over the 8-year period and only has their set repaired or replaced once. Considering the purchase price of that product at around $36, the customer has paid for the product 12 times over." (Ex. 142, DCR_00008794.)

[40] Ex. 256, a business plan presentation in 1994 or 1995, indicated that for the "Basic Telephones, Pre-Divestiture Customer" business, the Gross Margin % was 90-95% and the Return on Sales was 60-65% and that for the "Enhanced Telephones, Post-Divestiture Customers" business the Gross Margin % was 50-60% and the Return on Sales was 23-30% (DCRC00441294).

Ex. 111, Lucent Technologies Consumer Products L.P. Lease Financial Results, indicates historical financial data for 1984 through 1998, adjusted for historical comparison purposes to reflect changes in accounting methodologies. Return on Sales increased from 22.8% in 1984 to 70.44% in 1998, and Gross Margin percentages increased from 75.65% in 1984 to 90.74% in 1998.

A later Lucent document reported the 1999 Gross Margin % to be 94.4% and the 1999 Return on Sales to be 71.0% (LTCP Lease Business 1999 Financial Results, DCRC02752622, DCRC02752623).

Various AT&T studies indicated that newly-placed Big Six or Big Ten telephones reached their break-even point as follows: between 3.4 and 5.2 months in 1989 (Ex. 449, Recurring Revenue Marketing Information Platform, January 10, 1990, DCRC00026604); between 3 and 4 months in 1991 (DCR_00727509 through DCR_00727516), between 3.7 and 4.8 months in 1992 (DCR_00727548), between 4.4 and 6.1 months in 1993 (DCR_00379858), and between 3.9 and 5.8 months in 1994 (Ex. 179, DCR_00720850).

[41] As an example, average (unweighted) prices for basic trimline-style telephones listed in Consumer Reports articles declined from $49 in June 1984 to $23.75 in November 1995. The reported price of a GE trimline-style telephone declined from $60.00 in June 1984 to $33.00 in November 1995. The reported price of an AT&T 230 trimline telephone with memory function declined from $70.00 in January 1989 to $24.00 in November 1995.

[42] Embedded base lease products became fully depreciated sometime in the early 1990s (DeLura December 13, 2000 deposition at 80).

[43] The CPI was as follows:

1984	103.9	1988	118.3	1992	140.3
1985	107.6	1989	124.0	1993	144.5
1986	109.6	1990	130.7	1994	148.2
1987	113.6	1991	136.2		

[44] Percentage increases between 1984 and 1994 were as follow (Big Six average is weighted by the number of sets in service at the end of 1994):

	Total Increase	Compound Annual Growth Rate
Traditional Rotary	197%	11.5%
Traditional Touchtone	109%	7.6%
Princess Rotary	81%	6.1%
Princess Touchtone	72%	5.5%
Trimline Rotary	52%	4.3%
Trimline Touchtone	40%	3.4%
Big Six Weighted Average	105%	7.5%
Consumer Price Index	43%	3.6%

[45] Lease Business Review, October 30, 1996, DCRC00673256.

AT&T calculated that the sale/monthly lease price ratio (industry category average selling price/monthly lease rate) fell for the Big Six telephones between 1987 and 1992 as indicated in the sale/lease ratios below (Ex. 117, DCR_00720604):

	Sale/Lease Ratio	
	1987	1992
Traditional Rotary	13	7
Traditional Touchtone	8	5
Princess Rotary 8	5	
Princess Touchtone	7	5
Trimline Rotary 8	6	
Trimline Touchtone	7	5

AT&T indicated in a less-detailed document from 1994 or 1995 that the sale/price ratio continued to fall for corded telephones (Ex. 256, DCRC00441297):

	Sale/Lease Ratio				
	1991	1992	1993	1994	1995
Corded sale/price ratio	6.94	6.03	5.87	5.26	4.82

[46] When AT&T began separate billing for leased telephones in December 1984, it instituted a policy that customers leasing one or two telephones would receive a quarterly bill, while those who lease three or more phones, or have monthly charges of $12 or more, will receive a bill each month. (Ex. 232, attachment D.) Suzanne Ragsdale stated that 85% to 90% of customers received quarterly bills in 1994 through June 1998 (December 12, 2000 deposition, p. 36).

[47] The change to quarterly billing occurred when AT&T first implemented its own billing system. The threshold between monthly and quarterly bills was based on the amount of the bill and/or the number of products on an account (Ragsdale December 12, 2000 deposition at 48-49).

[48] December 18, 1995 Operations Memorandum from G. A. Cella to Managers of Lease Service Centers, DCR_02597734 described that, "[A] new ERC formula was developed which better shows the costs incurred by AT&T when a customer does not return a leased product to AT&T (this is called liquidated damages for breach of the return obligation in the contract). AT&T recycles the parts in some older returned products and in the case of newer products, the entire product."

[49] UTEC and ERC charges have been as follow:

	UTEC til 7/93	ERC 7-93 to 12-95	ERC 1-96 to 1999	ERC 1999
Trad. Rotary	$27.95	$35.96	$9.35	$7.00
Trad. TT	$44.95	$36.79	$24.86	$7.00
Princess Rotary	$47.95	$22.18	$9.35	$7.00
Princess TT	$54.95	$22.18	$9.35	$7.00
Trimline Rotary	$47.95	$33.47	$9.35	$7.00
Trimline TT	$54.95	$24.32	$12.56	$7.00

The UTEC charges are from Ex. 148, Product Pricing Comparisons. The initial ERC charges are from Changes to ARC Procedures, DCRC02621521. A December 18, 1995 Operations Memorandum from G. A. Cella to Lease Service Center Managers contains ERC levels both before and after the January 1996 change. Ex. 153 contains the 1999 ERC updates. At that time, all embedded base products were categorized into a single group, with the ERC calculated based on a weighted average and rounded to a whole number.

[50] September 14, 1995 memo from Steve Delura to Suzanne Ragsdale, DCR_01786389.

[51] As an example, AT&T's suggested response for on-line associates in response to customers' concerns about a rate increase included that, "It certainly wasn't an easy decision for us to make, but a necessary one. This small increase will ensure that we continue to provide you with high quality services..." (DCRC02765306).

In a videotaped statement to Phone Center personnel, Bob Martin stated that additional revenue from the 1988 repricing was important to the continued health of the lease program (Bob Martin on Repricing, December 17, 1987, DCR_0165646).

In customized form letters sent to third parties who had requested adjustments on behalf of long-term embedded base leasers, Lucent represented that, "AT&T CLS, like most businesses, has found it necessary to increase its rates for lease services..." (for example, Ex. 232, p. 6).

Minutes from Consumer Advisory Panel meetings indicate that AT&T told the Consumer Advisory Panel that 1990 rate increases were needed to "preserve profitability" and that the 1992 rate increases were needed to "bring price in line with costs" (Lease Encyclopedia, DCRC02596319 and DCRC02596324).

One customer contact employee described the need to justify price increases to customers: "There has to be a reason coming down from headquarters saying that this is what you can tell the customer about why we have to raise the price on their set. The set is not worth any more than it was last year. It's worth less. We need something to make the price increase seem legitimate." Ex. 277, 1990 Repricing, Base Saving Technique Investigation, June 1989, p. 55.

[52] Ex. 455, a December 1985 letter from Jeanine Sterling to Mary Ellen Martin, explained that, "Our pricing strategy uses a market-based methodology which examines competitive pricing, consumer willingness-to-pay research, and our financial requirements. For the rental products, we conducted extensive research on consumer willingness-to-pay, and the price points which were finalized and approved were based on these data. . ..The associated rental costs were also an important factor in our decision since we were given a specific MOI objective; however, we did not build the prices up from the costs." DCR_01798152.

[53] The Consumer Advisory Panel told AT&T in 1991 that it should use more specific terms, e.g., "price increase" instead of "repricing" (Lease Encyclopedia, DCRC02596324).

[54] Ex. 375, April 29, 1994 Operations Memorandum from G. A. Graf to Customer Services Managers.

[55] As an example, an AT&T document indicates that, "Beginning in late 1985, a lease communications program was implemented involving lease bill inserts which highlighted the benefits of leasing. The objective of the program was two-fold. Short term, its purpose was to minimize the amount of erosion caused by the 1986 increase in rental rates by extolling the non-economic and service aspects of leasing. Long term, its purpose was to minimize lease erosion on an on-going basis." (Ex. 269, 1986 Lease SBU Market Research Program Summary of Results, January, 1987, DCR_00005938.)

[56] Ex. 448, 1990 Lease Strategy SUMM Study Results, February 1991, DCR_00645612.

[57] As an example, Ex. 448 recommended "a quiet implementation" of the new minimum billing and advance payment requirements, "in order to minimize the negative impacts" of the changes (DCR_00645708). That same study considered elimination of premises visits and cautioned that, if implemented, the elimination "should not be widely communicated. Instead, awareness should be contained only to those who request it." (DCR_00645730.)

[58] There was a complaint from the Wisconsin Attorney General's office in 1994 (Ragsdale March 1, 2001 deposition at 76-87). Ex. 14 lists lease "legal/public relations incidents" in 1995, including suspension of a Zicollela lawsuit in March, United Homeowners Association and Gray Panthers complaints to the FTC beginning in March 1995, and various negative press articles beginning in March 1995.

AT&T planned several actions that it stated were in response to these criticisms, including the following:

- Distribution of the 1995 Updated AT&T Lease Service Contract (Ex. 13, an AT&T email regarding a March 24, 1995 meeting that identified "several actions that need to be evaluated to address our defensibility against claims of unconscionability and unfairness," and Ex. 292, containing a summary of a July 1995 presentation to AT&T's Consumer Panel).
- Distribution of "Your Consumer Guide to Leasing or Purchasing Telephone Equipment" (Ex. 13, Ex. 292, and Ex. 200 (a December 7, 1995 memo from Gerard G. Nelson to Jill Blaker), p. 4).
- Redesign of the bill (Ex. 292), including bill itemization (Ex. 8 (also Ex. 309), Ex. 9, and Ex. 200).
- Revisions to the instruction booklet accompanying the modular conversion kit to make it easier to follow (Ex. 292).
- Revisions to the policy regarding customer premises visits (Ex. 292).
- Standardization of adjustment policies for dissatisfied customers. (Ex. 292).
- Creation of a "PR document of commonly asked Q&As" (Ex. 13).
- Purchase awareness activities including CPDM inserts (Ex. 13).
- Time-based discounts (Ex. 13).
- Trade-up discounts (Ex. 13).
- Free modular converter (Ex. 13).

[59] In 2000, Lucent Technologies reported that service agencies provide repair, return, and exchange transactions at a 65% lower cost than by mail (Lease Operations, Lucent Technologies, 3/9/00, DCRC02752904).

[60] Printout of how to perform various functions associated with the CSC-R system (DCRC02765313).

[61] Ex. 301, Lease Erosion Exploration, May 1987, describes one contribution to lease erosion as, "Phone Centers are becoming scarce and difficult to locate, especially for people in small towns" (DCR_00089702).

[62] It has been reported that the Bell Operating Companies had about 1500 Phone Center stores in 1982 ("Should You Own a Phone?", Consumer Reports, July 1982, at 337).

AT&T reported in early 1991 that it had over 700 service agencies and over 400 Phone Center stores remaining after a 50% reduction in the number of Phone Centers, implying that AT&T had over 800 Phone Center stores earlier (The AT&T Consumer Products Story, February 1991, DCR_00107630, DCR_00107652).

Ex. 256, a business plan presentation in 1994 or 1995, indicates that there were 357 Phone Center Stores and 700 Service Agencies nationwide. It reported that Phone Centers had 1.16 million "outs" and 0.35 million "ins," service agencies had 0.5 million outs and 0.15 million ins, and customer service centers had 2.1 million outs and 0.35 million ins. (DCRC00441289).

[63] AT&T had 338 Phone Centers when they were closed ("AT&T Closing Nationwide Phone Center Stores," January 24, 1996, http://www.lucent.com/press/0196/960124.cpa.html).

[64] Ex. 255 indicates that 250-300 new service agencies were planned to replace closed Phone Centers, as of Sept. 1995 (DCRC00447743). In its press release, AT&T pledged to increase the number of service agencies by about 400, to total about 1000 ("AT&T Closing Nationwide Phone Center Stores," January 24, 1996, http://www.lucent.com/press/0196/60124.cpa.html). However, in October 1996, there were only 850 service agencies (Lease Business Review, October 30, 1996, DCRC00673255). The number of service agencies declined further after that.

[65] The number of service agencies has continued to decline to 673 (end of 1997), 651 (end of 1998), 641 (end of 1999), and 638 (as of March 9, 2000) (DCRC02752836).

[66] The 1996 Lease Service Contract states that "Most Service Agencies carry a wide variety of lease products and accessories. To select from the complete line of products, call the Lease Customer Helpline."

A December 5, 1997 Operations Memorandum from G. A. Cella to all Lease Service Center Managers noted that some products (i.e., a Cordless 7210, Auxiliary Amplifier, etc.) are not available at service agencies (DCR_01943810).

[67] See, for example, Traditional 100 Telephone Equipment (Lease) Focus Group, Group I and Group II videotapes, November 18, 1998, DCRC02974749 and DCRC02974750.
[68] See, for example, Ex. 240.

In June 1992, an AT&T draft document stated that, "We do not have 24 hour toll-free service in the truest sense of the word. CPAM [the computer system] goes down at 7:00 p.m. EST and customers calling our toll-free number are advised of our normal hours and asked to hang-up and call another 800 number if they truly require assistance. If leasers perceived that we did not provide 24 hour service their preference for lease would decline by 12.1%" (Ex. 359, draft of 1992 repricing presentation, DCR_00008385).

During her deposition, Helen P. Travers described that, at least since 1985, certain call centers were open 24 hours a day. At some point each night, however, the computer system would go off-line until the next morning and reps did not have access to customer account information. If a customer called during these hours and account information was needed, the rep would call the customer back later. (Travers July 25, 2001 deposition at 28-39.)
[69] On June 19, 1987, Shelly Cattan suggested that, "Perhaps free premise visits should be implemented quietly to quell dissatisfaction of those leasers who expect an in-home visit." Ex. 362, DCR_00027164. In 1992, AT&T indicated that 56% of embedded base leasers thought that premises visits were free, and that based on research lease preference declines by 6.5% when customers know that premises visits are not free (Ex. 359, DCR_00008384).
[70] DCR_00310478, part of Response Statement related to 1986 repricing.
[71] Ex. 262, Customer Communications Plans for 4th Quarter '95, DCRC00444466.
[72] CSC Associate Handbook, November 1994, DCR_01549492. If two hardwire conversions were completed within the first 30 minutes, the customer would be billed $30.
[73] Premise Visit Exploratory among Leasing Customers Who had a Premise Visit, May 1995, reported that some of the fifty customers interviewed had substantial bills for premises visits, citing in particular a $100 bill and a $179 bill. DCR_00094638.
[74] Ex. 262, DCRC0044466 and DCRC00444474; LSC Associate Handbook, November 1995, DCR_01549437.
[75] The ERC is now based on the actual costs to AT&T or Lucent, calculated as the net between the costs incurred because the set was not returned, and the costs that are not incurred because the set was not returned. AT&T and Lucent characterize this approach as "liquidated damages." (Delura December 13, 2000 deposition at 116.) AT&T indicated that ERCs implemented January 2, 1996 for the following products did not include replacement costs because no replacement would take place: traditional rotary desk and wall, trimline rotary desk and wall, Princess rotary, and Princess touchtone. The ERC for those telephones was $9.35. The ERC included replacement costs (netted against repair costs that would be incurred if the telephones were returned) for traditional touchtone desk and wall, and trimline touchtone desk and wall, with the ERC ranging between $12.56 and $25.73. (Ex. 183 and Delura January 16, 2001 deposition at 372-379). The ERCs updated in 1999 assume that all of the Big Six telephones that are not returned will be replaced (Ex. 153).
[76] The Sale-in-Place option was removed from AT&T's computer system in July 1993, when it was replaced by a Purchase Option Charge (POC), which was to be used in conjunction with save procedures. Between July 1993 and December 31, 1994, No-Risk Lease Plan (NRLP) customers could apply their credits only toward Sale from Inventory (SFI) (September 22 1995 email from Denise Zaug to Suzanne Ragsdale, DCR_02597731).

A series of emails in October 1995 (DCR_00699488 et seq.) described that much higher than expected numbers of products were POC'ed during the 3rd quarter of 1995. There was discussion of taking "appropriate misconduct discipline on the abusers." A comment was made that the best legal defense is to allow associates to agree to stop billing, if needed for customer satisfaction. The emails concluded with the conclusion that restricting POC orders was the only viable option left.

MINI SPEC for CR# 50313.02, November 2, 1995, DCR_02597732, stated that "The Legal department has requested that CPAM restrict the use of the PO action code..."

Elimination of M-T-M Purchase Option Charge (POC) Functionality in CPAM, DCR_00699466, described that the POC functionality would be blocked in CPAM for month-to-month customers effective January 8, 1996, but that Flexible Lease Plan (FLP) customers in states where the purchase option is valid, and Designer Line Telephone (DLT) customers in 3 states, would continue to have purchase rights. That document explained that, prior to January 8, 1996, POC orders could be processed for customer satisfaction with a manager's approval. After that date, a customer service specialist or a manager could zero-rate the telephone if needed to obtain customer satisfaction in extreme cases (DCR_00699467).
[77] Ex. 277 indicates that AT&T assessed delivery charges in 1989, both for regular delivery (e.g., $4.50 for shipping color exchanges and $18.95 for expedited delivery (pp. 5, 9, 61, 63).
[78] Lease Repricing Training, October 1989, DCR_00611703.

[79] In November 1995, the following charges were assessed for expedited delivery: $15.50 for Federal Express 2nd day service; $18.00 for Federal Express Standard Overnight delivery, and $36.00 for Federal Express Priority Overnight. Expedited delivery charges could be waived for shut-in customers in need of their only lease set. LSC Associate Handbook, November 1995, DCR_01549421-2.
[80] Phone Center Policy & Procedures, Repair, December 1, 1985, DCR 01522753. Sales Associates were instructed to inspect sets visually to establish abuse.
[81] LSC Associate Handbook, November 1995, DCR_01549861.
[82] CSC Associate Handbook, October 1994, p. 40 (DCR_01549311), Lease Encyclopedia (DCRC02596119), DCR_00271107, and DCR_00271170.
[83] Ex. 448, 1990 Lease Strategy SUMM Study Results, February 1991, DCR_00645708.
[84] Ex. 13.
[85] Ex. 259 (also Ex. 274), July 11, 1995 Lease Operations Project Overview, DCRC00443849 and DCRC00443851.
[86] The Consumer Lease Services Fall Business Plan, September 1, 1993, states the "action plan" to structure lease offers to avoid "trigger" terms in legislative regulations (DCRC00101983).

A March 26, 1999 document (Ex. 190) explained that Lucent does not believe that the consumer telephone leases that are month-to-month leases with a three month initial term and do not include a purchase option or otherwise transfer ownership to the consumer are subject to state retail installment sales act regulations, state rental-purchase agreement regulations, the Federal Truth-in-Lending or Truth-in-Leasing Acts or the implementing Federal Reserve Board Regulations (Regulation Z and Regulation M).
[87] Ex. 191 states that "LO [Lease Operations] has maximum flexibility in structuring leases if the term is 4 months or less because CLA does not apply and RISA probably will not apply." (Ex. 191 at 36). Donna V. Lazartic stated that she understood that the lease was three months because a longer lease would have required a signed contract and disclosure of all the payments for the length of the lease (April 10, 2001 deposition at 143-148).
[88] Ex. 191 at 8, 12, 17-18.
[89] Ex. 191 at 29.
[90] 1993 Recurring Revenue—Spring Strategic Outlook, DCR_00034799 and DCR_0003480.
[91] Ex. 191 at 13.
[92] Ex. 191 at 39-40.
[93] Ex. 199, AT&T Consumer Products State Legislative Agenda, December 11, 1994.
[94] In January 1987, Bruno Korschek commented that, "care should be taken so that lease programs do not negatively disrupt the current state of inertia of the lease base." (Ex. 269, 1986 Lease SBU Market Research Program Summary of Results, January, 1987, DCR_00005936). Shelly Cattan commented on this statement as follows (March 14, 2001 deposition at 54-55):

Q. What is your understanding of the statement "Thus, care should be taken so that lease programs do not negatively disrupt the current state of inertia of the lease base"?
A. I don't know what Bruno intended. My understanding as I read it is that any action should be evaluated before being taken.
Q Was inertia in the lease base something that AT&T wanted to change?
A. Not to my knowledge.
Q. Why not?
A. Because from my perspective, because the inertia was producing a predictable business...case or business situation.

[95] Beverly Powell stated that she had heard the term "shake the inertia tree" in the context of doing things that would cause a customer to stop leasing, e.g., if a direct mail piece said "don't lease, purchase this product" (June 21, 2001 deposition at 100).

Notes from a December 7, 1994 Lease Operations meeting indicated discussion of a "Paradigm: Don't shake inertia tree" (DCR_02388427).
[96] Ex. 436, Lease Base Retention and Growth Concepts, August 1986, reported that "AT&T's separate billing for leased telephones is a periodic reminder to [leasers] that they may not be acting in their own best economic interest" (DCR_00048889).
[97] Ex. 452, Effects of Bill Inserts on Erosion?, March 8, 1991, reports that a May 1987 Lease Erosion Exploration study described (on page 4) that, "The arrival of the bill every three months serves as a constant reminder. It is as if

the bill bears a neon sign: YOU ARE PAYING RENT WHEN YOU COULD OWN YOUR PHONE." (DCR_00095006.)

[98] Suzanne Ragsdale stated that 85 to 90% of accounts were billed quarterly between 1994 and June 1998 (December 12, 2000 deposition, p. 36).

[99] Operations Memorandum from G. A. Graf to Customer Services Managers, April 29, 1994, Attachment II, p. 3.

[100] DCRC00029947.

[101] Ex. 256, DCRC00441298.

[102] Lucent characterizes the Automatic Lease Payment Plan as a customer retention program (Lease Operations, Lucent Technologies, March 9, 2000, DCRC02752905).

[103] April 29, 1996 email from Shelly Cattan describing that many automatic payment customers had not received notification that Phone Centers had closed, and that they have little opportunity to see the 800 number since they do not get a bill (DCR_01092972).

[104] An October 29, 1986 AT&T analysis of breakeven price points for various types of telephones (Ex. 107) lists failure rates (apparently during a 90-day warranty period) ranging from 0.018 (traditional rotary desk) to 0.045 (traditional touchtone wall) for the Big Ten telephones.

A 1991 AT&T cost analysis used the following annual failure rates: 4.1% for traditional rotary desk, 4.7% for traditional rotary wall, 10.0% for traditional touchtone desk, 13.6% for traditional touchtone wall, 8.0% for trimline rotary desk, 10.0% for trimline rotary wall, 12.5% for trimline touchtone desk, 16.8% for trimline touchtone wall, 13.5% for princess rotary, and 16.3% for princess touchtone (Ex. 304, Embedded Base Analysis of Contribution, 11/20/91, DCR_00324667).

[105] Ex. 232, attachment I.

[106] Ex. 142, a June 24, 1991 presentation regarding 1992 repricing, indicated that "Accessibility in our offices is limited. An additional $2M of expense is needed to ensure that customers are able to get through based on current call volumes." DCR_00008794.

[107] An AT&T study in 1989 compared leasers who had all modular phones, all hardwired phones, and a mixture of modular and hardwired phones. Leasers with all hardwired phones had smaller households, were older (71.1% are 55 or older) and less educated, and had lower income (47.2% had income below $20,000) than other leasers (DCR_00286356).

[108] As an example, the current modularization kit for a desk (baseboard) jack contains two pages of instructions. AT&T's Hardwire Conversion Guide developed in 1995 had six pages of instructions for a desk (baseboard) jack (DCR_01549537 through DCR_015494542).

[109] AT&T developed Hardwire Conversion Guides in 1995 for distribution upon request, with a different guide to be sent to a customer depending on whether a wall jack, flush jack, or desk (baseboard) jack was to be modularized ((Ex. 262, Customer Communications Plans for 4th Quarter '95, DCRC00444466). The Hardwire Conversion Guides are in the LSC Associate Handbook, November 1995, DCR_01549519 et seq.

[110] As an example, the modularization kits use the now-standard wire colors of red, green, yellow, and black, and the kits and the modularization guides include conversion charts for three other possible color combinations. However, they do not address other potential situations, e.g., if the telephone wiring and/or connecting block is not color-coded or if there are not four wires, situations that may exist in older homes. Another situation unaddressed in the kits and modularization guides is that the existing telephone wiring, while color-coded, may be installed in a manner that is not in conformance with standard practice. This may occur, for example, if one wire is faulty and has been replaced by another wire.

Telephone wiring without obvious color coding was installed before about 1960 and wiring with three conductors rather than four was installed between 1950 and 1970. Carl Oppedahl, The Phone Book, Consumer Reports Books, Yonkers, New York, 1991, pp. 226-227.

Standard practice for Tip (negative, usually green) and Ring (positive, usually red) telephone wiring is described by Joseph La Carrubba and Louis Zimmer, How to Buy, Install, and Maintain Your Own Telephone Equipment, Almar Press, Binghamton, New York, 1981, pp. 9-10.

The existing connecting block may have two, three, or four connecting screws. Wesley Cox, Kiss Ma Bell Good-bye: How to Install Your Own Telephones, Extensions & Accessories, Crown Publishers, Inc., New York, 1983, p. 18.

[111] AT&T's modularization guide developed in 1995 has ten pages of instructions for wall phones (DCR_01549520 through DCR_01549529). First, to remove the hardwired phone from the wall, it must be taken apart, with the plastic housing removed first and then the phone base removed from the wall. A completely new backplate must be installed, since the phone cable was connected directly to the hardwired wall phone. The mounting technique

depends on the wall structure (e.g., wood stud, wallboard, plaster, electrical box) and may require a drill, wall anchors, and other complications. The insulation must be stripped from each wire, with the guide cautioning to not let the phone cable slip into the wall, since "it would be very difficult to retrieve." The guide also cautions to "Make sure you avoid hidden pipes, ducts and wiring."

[112] Premise Visit Exploratory among Leasing Customers who had Premise Visit, May 1995, DCR_00094626 et seq., describes interviews with 50 customers who had premises visits, virtually all of which were to replace a hardwired phone. Of the 50 customers interviewed, about one-third had only one telephone.

Ex. 442, 1991 Consumer Satisfaction Survey Recurring Revenue Results, March 2 1992, indicated that 38% of the embedded base leasers in 1990 and 27% of the embedded base leasers in 1991 had only one phone connected (at 461).

Ex. 300, Lease Awareness Survey Results, indicates that 20.8% of the customers surveyed (customers who have at least one product with an establishment date of 1/1/84, which may include replacements) in October 1995 had only one phone.

[113] Lease Operations Project Overview, Premise Visit, May 22, 1995.

[114] Premise Visit Exploratory among Leasing Customers who had Premise Visit, May 1995, DCR_00094626 et seq., reported that most of those interviewed were elderly, with almost one-half of them over 80 years old and 90% of them over 60. Of those interviewed, 72% were women. Two-thirds of those who provided income information had an income less than $20,000. The customers had a high level of anxiety and insecurity associated with wiring-- telephone equipment, with many of them unable or unwilling to do it themselves because they do not touch wiring, have failed eyesight, minimal finger dexterity, etc. Several were hard of hearing and mentally less able to follow instructions than in their younger years. The interviews identified that many of the customers had been tolerating inconveniences for some time with worn, mal-functioning, or broken telephones.

[115] This inference is drawn from Ex. 222, the August 12, 1991 Nationwide Training Package for New Adjustment Guidelines, which provides sample verbiage explaining that Phone Centers and service agencies provide a detailed receipt for returned telephones (Attachment II, p. 2), and includes copies of the Phone Center receipt and the Service Agency receipt (Attachment VIII), but does not mention the existence of a receipt for mailed-in phones. Additionally, Donna V. Lazartic was asked during her deposition and could not verify whether receipts were provided for mailed-in telephones, although she was aware that receipts were issued for returns to Phone Centers and service agencies (Lazartic April 10, 2001 deposition at 97-100).

[116] Ex. 222, Attachment I, page 1.

[117] Ex. 222, Attachment I, pp. 2-3.

[118] The guidelines stated, "No matter what the reason, Phone Center or Service Agency Channels SHOULD NOT BE CALLED to obtain receipt information. Also, customers should not be told to check with the PC/SA" (emphasis in original). (Ex. 222, Attachment V.)

[119] Ex. 316, September 25, 1995 draft Adjustment Policy Initiative circulated by Denise Zaug notes that AT&T had agreed with the United Homeowners Association that "Lease Operations would review the existing customer satisfaction adjustment policies, standardize the implementation process and consider liberalizing the adjustment policy (if appropriate)." The document establishes a success criterion of "Adjustments are kept at lowest possible cost." Ms. Zaug recommended that the existing adjustment guidelines were sufficient, but that associates be re-trained on the existing policy, including that "they have the authority to do what is necessary and reasonable to satisfy the customer." During her April 10, 2001 deposition, Donna V. Lazartic stated her recollection that the recommendations in Ex. 316 were implemented, with no significant changes to the policy. (Lazartic April 10, 2001 deposition at 107.)

[120] Ex. 262, October 13, 1995 email from Denise Zaug including the final copy of the LSC/ARCC training material for the 4th quarter of 1995, Attachment I, p. 8.

[121] Ex. 223, also a December 3, 1997 Operations Memorandum (DCR_02597614 and DCR_02597615).

[122] AT&T cautioned in 1993 that "itemization of equipment would alert people to the cost and potentially trigger the rational, cost-analysis argument against leasing" (Ex. 240, June 1993, at 61-62). The informational value of bill itemization was verified by the bill itemization trial, which found that erosion increased by 20%, call volumes increased by 14%, and customer satisfaction adjustments increased by 111% in the first four months of the trial (Ex. 15). Bill itemization was planned "to increase customer awareness & reduce legal risks" (Ex. 8 (also Ex. 309), March 8, 1995, p. 6). Suzanne Ragsdale's handwritten notes from a meeting during that period indicated that bill itemization was "recently prompted to help shore up our defensibility" (Ex. 9, February 21, 1995).

[123] Suzanne Ragsdale's December 12, 2000 deposition at 210-212.

[124] Ex. 232, Exhibit A.

[125] Ex. 205, AT&T Consumer Telephone Leasing Business Background, July 29, 1996. The brochure is in Ex. 232, attachment E.
[126] Ex. 232, attachment D. Also, Andy Griffith commercials, 1982-1984, DCR_02974748, DCR_02974751.
[127] Ex. 205, p. 9.
[128] Ex. 191, Seminar on Business Law Issues for Lease Operations—Product Management, October 4, 1994, at 3.
[129] Lease service contracts sent to customers include Ex. 234 (1993), Ex. 235 (1995), and Ex. 236 (1996). These, plus the 1997, 1998, and 1999 updates, are attachments to Ex. 232.
[130] Ex. 6, April 28, 1993.
[131] Ex. 5 (also Ex. 255).
[132] Ex. 3, May 2, 1998, and Ex. 4, October 29, 1997.
[133] June 21, 2001 deposition of Beverley D. Powell, pp. 43-44.
[134] AT&T March 4, 1986 bill, account no. 3-03-14-06991358-0, Bates no. 0045.
[135] AT&T February 4, 1988 bill, account no. 815-723-2617, Bates no. 0042.
[136] AT&T December 4, 1991 bill, account number 815-723-2617, Bates no. 0033.
[137] Ex. 375, Exhibit III and Exhibit IV; also Ex. 232, attachment F.
[138] July 24, 2001 deposition of Alfred R. Feldner at 20-28, 34-39.
[139] Ex. 261(also Ex. 288) contains several emails regarding AT&T's strategy for purchase offers. In a May 16, 1995 email, Shelly Cattan wrote that "our strategy will be to allow products [in bill inserts for Consumer Products Direct Marketing (CPDM)] which are not clearly cross-elastic with the base. In other words, tas [telephone answering systems], cordless, feature phones, and other high end products are acceptable (sic). When doing a cordless insert, it will not be sent to anyone who is currently leaseing (sic) a cordless." On May 16, 1995, Suzanne Ragsdale responded, "if this is truly to support defensibility, as well as revenue gains, we would not limit exposure the way you have outlined...We have told consumer groups, leasing customers, and various government agencies that leasing customers are aware that they can buy or lease a variety of products. In full integrity, why would we want to surpress (sic) the buying option based on the product the customer is leasing?" On May 17, 1995, Robert Ciminera replied, "Becasue (sic) we are trying to retain customers." The final email in the group concluded that "Shelly's proceeding with CPDM as planned." Shelly Cattan explained further during a July 26, 2001 deposition that, as an example, sending a cordless insert to a cordless customer would make it too easy for the customer to stop leasing (Cattan July 26, 2001 deposition at 375).

Purchase offers that were actually made through bill inserts were for "modern telephones at prices ranging from about $80 to $120..." (Ex. 232 at 7), including cordless telephones, telephones with built-in answering systems, and speakerphones. Examples are in attachment I to Ex.232.
[140] Ex. 205, AT&T Consumer Telephone Leasing Business Background: Regulatory History and AT&T Divestiture, p. 8. The booklet is attachment L to Ex. 232
[141] Ex. 197, February 21, 1996 letter from Gerard G. Nelson, AT&T, to Lois Greisman, FTC.
[142] Ex. 142 indicates that embedded base telephones need repairs on average once every eight years (DCR_00008794)..

Consumer Reports reported in 1982 that standard telephones, including those manufactured by Stromberg-Carlson, ITT, and Northern Telecom, needed repairs on average about once every seven years ("Should You Own a Phone?", July 1982, at 338).
[143] See, for example, the reference to "aggregate payments of $500 and up for the use of a telephone worth $30" in Ex. 193, and the comment in Ex. 142 that embedded base customers, on average, pay $427 when the purchase price is $36.
[144] Ex. 232, attachment K.
[145] August 24, 1995 memo from representatives of United Homeowners Association, United Seniors Health Cooperative, and Gray Panthers to J. Robert Ciminera and Donna Lazartic, DCR_01967214.
[146] Ex. 232, attachment M.
[147] For examples, see attachment G to Ex. 232.
[148] See, for example, Ex. 193, in which Gerard G. Nelson described the likelihood that the FTC would take action against AT&T's lease program partly because of the view that "unthinking consumers are deserving of FTC protection."
[149] Lease Repricing Training, October 1989, DCR_00611667, DCR_00611691, DCR_00611724.
[150] Lease Encyclopedia, DCRC02596336 et seq.
[151] Ex. 451, AT&T Consumer Residential Telephone Leasing Questions and Answers, 5/24/95, DCR_00090338.
[152] AT&T Consumer Residential Telephone Leasing Questions and Answers, 10/22/97, DCR_01061968 et seq.

153 Suggested marketing verbiage, Lease Encyclopedia, CSC Associate Handbook, October 1994, DCRC02596219.
154 Ex. 277, 1990 Repricing Base Saving Technique Investigation, June 1989, reported on focus group interviews of high-performing customer contact employees conducted with the objectives of understanding employee perceptions regarding the importance of saving the lease base; to identify reasons for lease vulnerability; to document effective ways to save the lease base; to explore reactions to possible 1990 price increases; and to gain guidance in training employees in handling customer reaction to price increases. Regarding strategies to save the lease base, Ex. 277 reports that, "Unless questioned, most employees tell customers that they will receive brand new replacement phones when they lease" (p. 29). Ex. 277 includes in its description of effective lease saving techniques that "A number of employees effectively explain service in terms of an extended service plan or insurance" (p. 41), and that reps often stretch the truth to fit the customer's situation, including saying they lease when they really do not (pp. 45-46). One rep reported being told by instructors to "Be creative. Lie." (p. 45.)

Ex. 277 documented effective ways employees encouraged customers to continue leasing after the 1988 price increase (p. 53), including, "Put the increase in the context that everything is increasing in price. Said AT&T was adding more service centers. Said that the increase insured continued benefits to the customer." In discussing how reps can respond to price increase complaints, Ex. 277 describes the following "favored response" (p. 59): "You make them feel that you feel just as bad as they do. Tell them you have to pay just like they do, whether you are leasing or not. ... I say, 'I'm not getting a cost of living raise and my rates are going up too.'" A second "favored response" is to put the increase in the perspective of the total economic picture, e.g., "I say, 'You see. Gas has almost tripled in price. But isn't it good that AT&T is willing to think about it's (sic) customers? We've only increased by 7 cents [per day] in the past 10 years. What other bills do you have at that price. At least we can still give you this service at this price regardless of what the economy has done." Similarly (p. 60): "I saw the water bill go up, the electric bill go up, the rent go up, the taxes go up and our expenses go up on everything. AT&T tries to keep it at a minimum." Other "recommended" responses include (p. 60): "Justify by continued good quality and service. Justify by increased product line/choices."
155 Printout of instructions on use of the computer system, DCRC02765303 and DCRC02765306.
156 In planning the restructuring, AT&T recognized licensing the AT&T brand for lease services as a solution to stem the anticipated erosion resulting from loss of the AT&T brand (Ex. 255, Lease Operations Fall Business Plan, September 25, 1995, DCRC00447743). The 1996 AT&T brand license was renegotiated in 1999 (Shelly Cattan March 14, 2001 deposition, p. 31).
157 Ex. 277, 1990 Repricing Base Saving Technique Investigation, June 1989, DCR_0066763.

Ex. 277 reported on focus group interviews of high-performing customer contact employees conducted with one objective (among others) of documenting effective ways to save the lease base. The very first "effective lease saving technique" documented in that report was aimed at the elderly poor (DCR_0066769, DCR_0066770), emphasis in original):

> "Among the benefits stressed: not surprisingly repair and exchange is the most effective. For the elderly, this is most successfully put in terms of security:
>
> > "When the elderly people call and say, 'I can't afford this $2.70 a month,' that's a great time to hit them with, 'That's why you want to lease to have the security if your phone ever breaks. Then you won't be out $50 to buy a new one.".

158 Ex. 325 (also Ex. 370) describes AT&T's Market Segmentation Plan, and was distributed by Randy Malone on June 3, 1996. AT&T "has been consciously using various segmentation schemes since 1992" (Ex. 325, DCR_01112578). In 1992, Mercer Consulting developed six Psychographic segments of customers sharing common reasons for leasing: Always and Secure, Just in Case, Full Program, Gotta-Haves, Basic Inertial, and Upscale Inertial In 1993, AT&T used behavioral scoring to predict the likelihood of each customer to stop leasing, establishing ten Attrition deciles. In 1994, AT&T developed another segmentation plan with nine demographic segments: Seniors, Pre-seniors, Families, Singles, Youth, Mobile Professionals, Home Office, Hispanic, and College. When Ex. 325 was prepared in mid-1996, accounts were identified with their Attrition decile and Psychographic segment, which were used to "drive scripts for the Lease Service Center associates' interactions with existing lease customers." In that plan, Mr. Malone recommended that future segmentation be focused on identification of groups of customers most likely to leave and why they are leaving, and the formation of investment and marketing strategy decisions based on these segments. During his deposition, Mr. Malone stated that these recommendations were adopted, that nine retention segments were created, and marketing to those segments was done through bill inserts (Malone April 17, 2001 deposition at 106-107).

Ex. 377, a November 1, 1993 operations memorandum from the Customer Services Planning Director at headquarters to all Customer Services managers described implementation of customized marketing based on the six Psychographic market segments, with each account given the appropriate market segment identifier. The memorandum included, for each market segment, the order in which Lease Service Guarantees should be presented, lists of products to recommend, save offers to utilize, and verbiage to use. Associates were instructed to begin immediately to use this information, which was to be mechanized starting in 1994.

Ex. 377 reported the following proportions of sets in service in each of the Psychographic segments (DCR_011472445):

Segment	% of Sets in Service
Always Secure	18%
Just in Case	33%
Full Program	17%
Gotta Haves	1%
Basic Inertia	22%
Upscale Inertia	9%

In the "Steps to the Save Process" portion of the CSC Associate Handbook, dated October 1994 (DCRC02596214 et seq.), associates are told to determine the reasons for a customer wanting to return/purchase a leased set and to personalize the Lease Service Guarantees for that customer. If that is not successful, the Associates are to offer discount programs based on the identified reason for the return.

A December 5, 1997 Operations Memorandum from G. A. Cella to all Lease Service Center Managers contained training material for a new Attrition Segmentation . (DCR_01943805 through 3810). Nine Attrition Segments were created, to replace the existing Market Segments (Gotta Haves, etc., which would be removed), to assist Associates in tailoring their Save and Service offers. Revised scripting by return reason code and the Attrition Identifier was to be loaded into CSC-R in January 1998. Each attrition segment is described. During the analysis, Segment 4 was added to another segment. The new scripting provides the top three Lease Service Guarantees based on the Attrition Identifier and the reason for the return. Associates were instructed to give the guarantees in the order listed..

[159] Lease Encyclopedia, DCRC02596355.

[160] Lease Encyclopedia, Leaser Programs, DCRC02596225.

[161] Similar types of promotions were considered when AT&T had just begun to develop ways to use market segmentation information. In a planning document, a "Free X months to continue" marketing action was considered, to be offered to the Basic Inertial and Upscale Inertial segments.. Executive Summary draft, December 16, 1991, DCR_00072153.

[162] CSC Associate Handbook, October 1994, DCR_01549285 through DCR_01549301.

[163] Ex. 377.

[164] Dudley Burgess on Repricing, December 17, 1987, DCR_0165645 (videotape).

[165] As one associate explained, in marketing the NRLP, "You don't tell them that they have to call back after six months" (Ex. 277, DCR_0066779).

[166] CSC Associate Handbook, October 1994, DCR_01549313, also Lease Encyclopedia, DCRC02596119.

[167] Ex. 193, Memorandum from Gerard G. Nelson to Jill Blaker, November 23, 1995, states that "(A)ggregate payments of $500 and up for the use of a telephone worth $40 is not likely to be considered trivial by a consumer-oriented regulatory agency [the FTC]. And, although we argue that the value of the lease services needs to be considered, we probably can't push that argument too far, given the profit margins on this business. Thus, I believe that the FTC would consider the degree of harm involved to be in the 'moderate to high' range." Also, "In excess of 50 million customers have terminated their leases and ... the remaining 6 million is a small fraction of the number. ...a consumer-oriented regulatory agency could counter argue that when consumers reject a proposition by margins of 8 or 9 to 1, there must be something wrong with it, and that the remaining customers would only be customers as a result of some deceptive or unfair practice. This is an even more likely conclusion if the agency perceives that the remaining leasing customers are members of a class of consumers worthy of special government protection."

[168] Ex. 277, 1990 Repricing Base Saving Technique Investigation, June 1989, reported on focus groups of high-performing customer contact employees conducted with the objective (among others) of understanding employee perceptions regarding the importance of saving the lease base. Some of the notable information in that report regarding employee attitudes include the following:

"Employees don't believe in leasing, they don't lease themselves (some never have) and they don't believe that most customers want to lease." (p. 6)

The employees would like "A solid reason from corporate headquarters that demonstrates how an increase will benefit the customer. ... Reps hope to keep the 'affordable' $2.70 set for the elderly. ... Reps hope to be able to offer increased products and services concurrently with repricing." (p. 10.)

In the "Summary of Successful Customer Contact Behavior": "Perform despite their own beliefs, realize that what they believe doesn't necessarily hold for everyone; convince themselves that some people really want/need to lease; generally separate their own opinions from the job." (p. 12.)

"While they know that they should be attempting to save leases, generally their hearts are not in it. ... They need to be motivated to give the task their all. Furthermore, if these knowledgeable and talented reps need more motivation, reps of lesser expertise will need even more inducement." (p. 14.)

In the words of employees (pp. 25-26):

> "(I)t's hard when you think this person may not be eating."
>
> "You feel sorry for old people who are on social security and have to pay their leasing bill every month. It's a big chunk for them. It's real awkward to try to save that lease when they say they get $200 a month and $30 of it goes toward the phone and leasing. "
>
> "I think leasing is a stupid idea and I'm not going to try and explain the benefits of something I think is stupid."
>
> "How can you promote something you yourself would not do? I don't like leasing. I'll lease to customers because I have to but I don't like it."
>
> "It makes sense to own your own phone. Anybody who looks at it knows that leasing is not the way to go unless you have five children."

"As a group, CSSC personnel would prefer lower prices across the board, except in the case of the $2.70 traditional which they would stabilize. A number of people in both the CSSC offices and the Phone Center Stores hope that AT&T will keep an 'affordable' set for those who cannot afford anything higher." (p. 57.)

"Employees literally 'beg' AT&T to make leasing easier for, affordable and attuned to the elderly." (p. 63.)

In a June 24, 1991 presentation regarding 1992 repricing, the lease Strategic Business Unit (SBU) reported that, "Quantitative results indicate that with repricing our people's willingness to support lease declines. In business offices support declines by 20% and in Phone Centers by 14%. ... We also found that our people are most concerned over the elderly and low/fixed income leasers. They view our repricing as greed and having little concern for the customers they seem to care the most about. ...(T)heir (sic) is a very low opinion of how CP (Consumer Products) is balancing the needs of customers, owners and people and that opinion becomes even more negative when we reprice." (Ex. 142 at 4.) A draft of that presentation (Ex. 359) stated that the SBU recommendation was no repricing. However, Ex. 142 contains a modified SBU recommendation "to proceed with 1992 Repricing and invest in improving the quality of the service provided to our customers which will help our people to better support lease."

Ex. 279 includes questionnaire responses from employees prior to a repricing, apparently the 1992/93 repricing based on the price references. The comments were very critical of the proposed price increases, including the following:

"Raising the lease on the rotary is taking advantage of senior citizens…I would really think hard about raising the lease cost on rotarys to $4.49 a month. The majority of people leasing a trad rotary are senior citizens on fixed incomes and this is going to be a bit steep for them."

"Do you want to retain the lease base or not! It was OK before, but NO MORE. We had a hard time after last one and this time it won't work!"

"Check lease prices of other items. I lease a bottled water system for $11.00 a month. This unit costs $400.00 to purchase. Under the lease agreement they come to my house and clean it every 3 months. We will want $4.49 for a $39.95 phone?"

Ex. 256, a business plan presentation from 1994 or 1995 lists as one obstacle to repricing the fact that repricing is "received negatively in channels" (DCRC00441303).

[169] Ex. 365, 1989 list of action items preceding the 1990 repricing (DCR_00323671).

[170] The 1988 Business Plan of the Lease Strategic Business Unit discusses the need to educate employees regarding the benefits of leasing, lease demographics, and AT&T's commitment to future product expansion "to help managers and their contact employees keep a sound perspective on the affect of repricing and to encourage the level of motivation needed to support lease retention." Ex. 141, p. 12-7.

Lease Repricing Training, October 1989, describes a "Professor Phones and the Lease Crusade" video "designed to motivate AT&T customer contact personnel to believe in the value of leasing. … nonbelievers will become believers." (DCR_00611675.)

[171] Lease Repricing Training, October 1989, DCR_0061689, DCR_00611696.

[172] Ex. 375, April 29, 1994 Operations Memorandum from the Vice President, CLS Customer Services to all Customer Services managers, cover memo and Attachment I, p. 1.

[173] Lease Encyclopedia, Lease Awareness Training, DCRC0256332 et seq.

[174] August 24, 1995 memo from representatives of United Homeowners Association, United Seniors Health Cooperative, and Gray Panthers to J. Robert Ciminera and Donna Lazartic, DCR_01967213.

[175] Ex. 277, DCR_0066792.

[176] Ex. 277, DCR_0066794.

[177] Ex. 292, email from Donna Lazartic to Shelly Cattan summarizing the July 1995 Consumer Advisory Panel meeting..

[178] Ex. 292.

[179] Ex. 292.

[180] Ex. 292.